UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

WARNER BROS., A DIVISION OF TIME WARNER ENTERTAINMENT COMPANIES, L.P. [1]/

Employer

and Case No. 31-RC-7801

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 174

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]/

3. The labor organizations involved claim to represent certain employees of the Employer.[3]/

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:[4]/

INCLUDED: Full-time and regular part-time office clerical employees, defined in the job classifications set forth in Exhibit A of the Agreement of February 1, 1996 between Warner Bros. and UE Local 1094 Warner Bros. Office Employees (W.B.O.E.), and such other new clerical positions as may be included by mutual agreement, employed by the Employer at its facility at 4000 Warner Boulevard, Burbank, California, or at its related facilities in Los Angeles County.

EXCLUDED: Professional employees, all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION [5]/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement

thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Office and Professional Employees International Union, Local 174, by UE Local 1094 Warner Bros. Office Employees (W.B.O.E.), or by neither.**

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *National Labor Relations Board v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the **FULL** names and addresses of all the eligible voters shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the office of Region 31, 7th Floor, 11150 West Olympic Boulevard, Los Angeles, California 90064-1824, on or before **December 7, 1999**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **December 14, 1999**.

DATED at Los Angeles, California this 30th day of November, 1999.

/s/ Byron B. Kohn
Byron B. Kohn, Acting Regional Director
National Labor Relations Board
Region 31
11150 West Olympic Blvd., Suite 12100
Los Angeles, CA 90064-1824

FOOTNOTES

1/ The name of the Employer appears as corrected at hearing.

2/ The Employer, Warner Bros., a division of Time Warner Entertainment Companies, L.P., is engaged in the production of motion pictures from its facility located in Burbank, California. Within the past 12 months, a representative period, the Employer has derived gross revenues in excess of $500,000. During the same representative period, the Employer has purchased and received goods, supplies, and materials valued in excess of $50,000 directly from sources outside the State of California. The Employer thus satisfies the statutory as well as the Board's discretionary standard for asserting jurisdiction. *Siemons Mailing Service*, 122 NLRB 81 (1959).

3/ UE Local 1094 Warner Bros. Office Employees (W.B.O.E.) was granted the status of an Intervenor in this matter on the basis of the currently-effective collective bargaining agreement between it and the Employer covering the petitioned-for employees, which by its terms will expire January 31, 2000. The parties have stipulated and I find that the Petitioner, Office and Professional Employees International Union, Local 174, UE Local 1094 Warner Bros. Office Employees (W.B.O.E.), and United Electrical, Radio and Machine Workers of America (UE) are labor organizations within the meaning of Section 2(5) of the Act.

4/ The unit description is in accord with a stipulation of the parties. The sole issue for consideration is how the Intervenor should be listed on the ballot for election purposes in this matter.

INTRODUCTION

The record reveals that the Intervenor, set forth in its existing contract with the Employer as UE Local 1094 Warner Bros. Office Employees (W.B.O.E.), herein referred to as UE Local 1094, wants its name to appear on the ballot in this case as United Electrical, Radio and Machine Workers of America (UE) and its Local 1094. The Petitioner and the Employer refused to stipulate to the name proposed by the Intervenor.

BACKGROUND

For many years, Warner Bros. Office Employees Guild, hereafter referred to as WBOEG, an independent union, represented the Employer's office clerical employees and negotiated successive collective bargaining agreements with the Employer. In 1994, WBOEG voted to affiliate with the United Electrical, Radio and Machine Workers of America, herein referred to as the UE. UE and WBOEG's affiliation provided that WBOEG would be an autonomous local of the UE. WBOEG subsequently dropped the word "guild" and became Warner Bros. Office Employees (W.B.O.E.).

In conjunction with the adoption of a new constitution by the UE in 1996, the position of Executive Secretary was created. The Executive Secretary is an administrative officer of the Local. The Executive Secretary is subject to the authority, direction and control of the Local's Board, and has always been a staff person assigned by the UE to work with the Local. The Executive Secretary is paid by the UE. The Executive Secretary is a member of the Local's Board, attends its meetings, participates in collective bargaining activities and is a member of the negotiating team. The Local fills the Executive Secretary position and can remove the Executive Secretary.

With respect to the 1996 extant collective bargaining agreement between the Employer and UE Local 1094, the Executive Secretary participated in the negotiations and was one of two signatories to the current collective bargaining agreement. The other signatory was Local President Arthur Mensor. The Executive Secretary signed as the "Executive Secretary", with no reference to the UE in her designation or in the contract.

Article 25 of the UE constitution outlines the basic rank and file structure of the UE as one where each Local controls its own affairs. The UE's relationship to UE Local 1094 is similar to its relationship with any other local in the UE, whether the local is an independent union that affiliated with the UE or is chartered by the UE as a result of an NLRB or public sector election, and the language in the Local's constitution parallels that of other UE locals. UE field organizers provide support to other locals in a similar manner to that provided by the UE to this Local.

INTERVENOR'S POSITION

The Intervenor contends that it should be listed on the ballot in this matter as United Electrical, Radio and Machine Workers of America (UE) and its Local 1094 because UE Local 1094 is an integral "part and parcel" of the national union and parent organization.

It contends that the UE and UE Local 1094 are joint bargaining representatives. The Intervenor argues that it is well settled that an employer's statutory duty to bargain over terms and conditions of employment runs only to the certified or recognized bargaining representative. In the case of an affiliation of an independent local with a national union, the bargaining obligation runs to the local and not to the national union. *Newell Porcelain Co.*, 307 NLRB 877, 878 (1992), *enf'd*, 986 F.2d 70 (4th Cir. 1993). The UE contends that UE Local 1094 is the successor to the recognized bargaining agent, WBOEG. The Intervenor frames the issue before the Region as whether the bargaining history of the parties has changed the nature of the relationship from a single bargaining representative to that of a joint bargaining representative involving both the Local and the UE.

Prior to the 1996 Employer/UE Local 1094 contract, no mention was made of the UE in collective bargaining agreements. According to the Intervenor, in 1996, the parties changed the name of the bargaining representative to UE Local 1094 to reflect both the affiliation and the role of the UE in negotiations and in the Local. In 1996, the Local also adopted a new constitution which reflects a closer tie between the Local and the UE than the arms length relationship of an independent affiliate of a national union. Thus, the Intervenor argues that the reality of the UE relationship with UE Local 1094 is arguably that of joint bargaining representatives.

The Intervenor contends that although WBOE affiliated with the UE in 1994, it was not until 1996 that the Local's constitution and the collective bargaining agreement reflected the reality of the new relationship with the UE. At that time, the role of the Executive Secretary was institutionalized in the Local's constitution and in the collective bargaining agreement. According to the Intervenor, the Executive Secretary, in addition to

providing support to the Local, functions as a member of the Local's policy making Board and of its negotiating team, and was one of two signatories to the 1996 contract. Moreover, according to the Intervenor, the parties agreed that the appropriate name for the bargaining representative would be UE Local 1094, reflective of collaborative or joint bargaining responsibilities. The Intervenor posits that had the parties wanted the contract to reflect an affiliation only, the contract could have read WBOE, an affiliate of UE but it does not. Thus, the Intervenor argues that the facts in this case support a finding that UE and the Local are joint bargaining representatives in the instant case.

The Intervenor argues that the issue here is what should be the name on the ballot, UE Local 1094 or UE and its Local 1094. The UE Field Organizer entered an appearance on behalf of both the UE and UE Local 1094. There was no objection from any officer of UE Local 1094 to his appearance. The UE Field Organizer was the sole witness to testify regarding the relationship between UE and UE Local 1094, characterizing the Local as an integral part of the UE.

The Intervenor contends the Board has long held that two or more labor organizations may join together to file a petition as joint petitioners or to intervene in a proceeding. *The Stickless Corp.*, 115 NLRB 979 (1956) Here, both UE and UE Local 1094 have filed a showing of interest, seeking to intervene as UE and its Local 1094. Both are labor organizations and there is no evidence that they do not intend to bargain jointly. Thus, it is appropriate to allow bargaining unit employees to determine whether they wish to be represented by UE and its Local 1094 or by Petitioner. *St. Louis Independent Packing Co.*, 169 NLRB 1106 (1968); *New Hotel Monteleone*, 127 NLRB 1092 (1960). Moreover, there is no evidence of a schism between UE and the Local. *Mohawk Business Machines Corp.*, 118 NLRB 168 (1957). Thus, the Intervenor argues that it is appropriate to find that UE and its Local 1094 are joint intervenors and place their names on the ballot as such.

PETITIONER'S POSITION

Petitioner argues that UE Local 1094 is a local affiliate of the UE and represents those employees who are in the bargaining unit stipulated to be appropriate in this case. In turn, the stipulated-to bargaining unit is coextensive with the coverage of the collective bargaining agreement between the Employer and UE Local 1094, the only labor organization which is signatory to the agreement. The agreement specifically recites that it is between the Employer and "…UE Local 1094 Warner Bros. Office Employees." The Petitioner asserts that there is not a single reference to the UE in the entirety of the agreement nor is there any record evidence that the UE is separately bound by or to any of the provisions set forth in the agreement.

Petitioner argues that UE Local 1094 was chartered for the express purpose of representing employees within the stipulated-to bargaining unit and represents no other workers and has no bargaining relationships with any entity other than the Employer. Petitioner contends that the record shows that UE Local 1094, as an autonomous local affiliate of the UE, elects its own officers, maintains its own offices, has its own dues structure, has its own bylaws and has an existence separate and apart from the UE.

In contrast, Petitioner contends that the UE has an existence distinct from that of UE Local 1094. The UE is a national labor organization with numerous local affiliates across the country. The UE has its own officers - who are elected at a national convention as opposed to a membership election as is the case at UE Local 1094 - and has an array
of paid staff (or field) representatives. The UE has its own separate constitution which governs its internal affairs and which is distinct from the bylaws adopted by UE Local 1094.

Petitioner asserts that the only proper Intervenor to this proceeding is UE Local 1094 and not the UE. It contends further that since UE Local 1094 never made a separate appearance in this proceeding, that there is no proper Intervenor party. Petitioner asserts its position is based upon two considerations: (i) since the Region will conduct the instant election in an existing bargaining unit, the identity of the Intervenor should comport with that of the incumbent union and (ii) under the traditional rules of agency which apply to

proceedings under the Act, UE Local 1094 and the UE are legally distinct and separate entities such that UE Local 1094 - with regard to maintaining the efficacy of the existing appropriate unit - is the only proper Intervenor.

Petitioner asserts that Board policy which governs elections in decertification proceedings is applicable here. It argues that the reference to Board law applicable to decertification proceedings is proper since the bargaining unit here is the same one which would be affected by a decertification petition; an existing, well-established bargaining unit, the description of which is not in dispute.

According to the Petitioner, under such circumstances, the Board is loathe to conduct elections in anything other than the extant bargaining unit. *Campbell Soup*, 111 NLRB 234 (1955). This policy exists since the Board will not countenance the destruction of an existing unit absent very compelling circumstances indicating a substantial modification to the previously established unit. *Albertson's Inc.*, 307 NLRB 338 (1992). Thus, Petitioner argues where the evidence demonstrates the existence of a historical pattern of bargaining, the Board will adopt the parameters of that relationship as the appropriate unit for purposes of a decertification election. *General Electric Co.*, 180 NLRB 1094 (1970).

Here, Petitioner argues the election will cover an extant bargaining unit which was established through a historical pattern of bargaining between the Employer, UE Local 1094 and the predecessors to UE Local 1094. Petitioner argues that it is undisputed that such bargaining relationship predated UE Local 1094's merger with the UE and continued after UE Local 1094 -- the former Warner Bros. Office Employees Guild -- became affiliated with the UE. In fact, Petitioner argues there is no evidence that the bargaining relationship ever mutated, subsequent to the merger, such that the UE became a party signatory to the Agreement.

Although the UE attempts to attach significance to the fact that a UE Field Organizer signed the Agreement as the Executive Secretary, the Petitioner contends that there is no indication from the face of that contract that she signed the Agreement in the capacity of

a UE representative so as to bind the UE to the Agreement. The Petitioner argues that, to the contrary, the signature page of the Agreement, as with every other provision in the Agreement, fails to even reference the UE. The Petitioner notes that the UE does not pursue grievances under the Agreement or separate negotiations with Employer, evidence which reinforces a finding that the UE is not a party to the present bargaining relationship embodied within the Agreement.

According to Petitioner, the UE has never become a party to the Agreement nor assumed representational status within the stipulated unit. Since the UE has not established that it was a party to the bargaining relationship covering the stipulated-to bargaining unit, it is not a proper Intervenor party.

Petitioner further contends that the UE is also not a proper Intervenor party as it and UE Local 1094 are legally separate entities under the standard agency principles set forth in the Act. In *Carbon Fuel v. United Mine Workers*, 444 U.S. 410 (1979), the Supreme Court held that traditional principles of agency applied in determining whether an international union is liable for the actions of a local affiliate. *Id* at 413-414. Therein, the Supreme Court unambiguously stated that unions are bound by the actions of other affiliated unions only where there is "…legal proof of agency…" *Id*. at 414.

Presently, the relationship between the UE and UE Local 1094 -- as concerns the stipulated-to bargaining unit -- fails that test. To begin with, UE Local 1094 maintains a completely different constitutional structure from the UE. UE Local 1094 is "autonomous" from the UE, makes its own bargaining decisions as to the Agreement, has the sole authority to settle grievances arising under the agreement and governs its internal affairs without oversight from the UE.

Petitioner argues that the UE and UE Local 1094 are legally distinct entities and that the UE has no standing with regard to enforcement of or bargaining over the terms of the Agreement. Absent evidence that the UE and UE Local 1094 exist in a relationship of "fundamental association", the UE has no standing with regard to the status of an Intervenor in this proceeding.

EMPLOYER POSITION

The Employer contends that the evidence establishes that the exclusive bargaining representative in this matter is UE Local 1094. The Employer further asserts there is not a joint collective bargaining representative consisting of UE Local 1094 and the UE and the bargaining representative is not the UE acting "on behalf" of UE Local 1094. As a result, the Employer argues that to the extent that any entity or combination of entities other than UE Local 1094 moves to intervene, the motion should be denied.

The Employer notes that the current collective bargaining agreement covering the unit in question recognizes, as the exclusive bargaining representative, "UE Local 1094, Warner Bros. Office Employees", and that this name closely corresponds to the name set forth in UE Local 1094's Constitution, "United Electrical, Radio and Machine Workers of America (UE) Local 1094, WBOE."

The Employer contends that the record discloses that the UE is a legally distinct entity with its own constitution and by-laws which guarantees autonomy to its affiliated locals, that the historically recognized bargaining representative for the unit was WBOEG, and that several years ago WBOEG affiliated with the UE and the Employer continued to recognize WBOEG, through its new name resulting from the affiliation. The Employer argues that there was never any form of recognition extended to the UE by the Employer and claims this is further evidenced by the recital in the collective bargaining agreement which evidences that "the Union is now and for many years has been the exclusive representative for collective bargaining purposes of the office employees of [Warner Bros.]."

According to the Employer, the only entity which enjoys any bargaining representative status with respect to the unit of Warner Bros. employees is UE Local 1094 and the attempt at the hearing to alter the identity of the bargaining representative should be rejected.

DISCUSSION

Based upon my review of the record, briefs, exhibits and relevant case law, I have concluded that the Intervenor should be listed on the ballot in this matter under the same name with which it has the contract with the Employer, that is UE Local 1094 Warner Bros Office Employees (W.B.O.E.). I conclude this for a number of reasons. One, the Employer's employees are familiar with the Intervenor under the name on their contract and to list the Intervenor under a different name would potentially serve to confuse the employees. Secondly, the Intervenor was granted Intervenor status in this matter on the basis of its existing contract, in which it is listed as UE Local 1094 Warner Bros. Office Employees (W.B.O.E.). As that is the basis on which it has been granted Intervenor status, that is the name under which it should appear as the Intervenor on the ballot. Third, the record has not shown that the UE and UE Local 1094 should be listed in the conjunctive, the effect of which is to expand the employees' Section 9(a) representative. The entity with which the Employer has bargained, and with which the employees are familiar, is UE Local 1094. The record disclosed that UE Local 1094 is an autonomous unit of the UE. The Executive Secretary position, created by the UE, is accountable to and under the authority of the Local. The Executive Secretary signed the extant agreement as the Executive Secretary and there is no indication in the contract that she was signing on behalf of the UE. The analogy to a decertification election is well taken in this matter. Just as the law requires that the unit in a decertification petition be coextensive with that in the contract, so too in this situation, the name of the Intervenor who, gained that status by virtue of its extant agreement, should be coextensive with the name in the existing agreement.

The Petitioner's contention that there is no proper Intervenor as UE Local 1094 failed to make an individual appearance at the hearing is rejected. The UE representative appeared at the hearing on behalf of "the Intervenor" and on behalf of both the UE and UE Local 1094.

CONCLUSION

The proper name of the Intervenor in this matter is UE Local 1094 Warner Bros. Office Employees (W.B.O.E.) and that is how it shall be listed on the ballot.

There are approximately 300 employees in the bargaining unit.

5/ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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